

REMARKS

Before entry of this Amendment, claims 1-5, 10, 12, 13, 15, 16, 20 and 25 were pending in the application. After entry of this Amendment claims 1-5, 10, 12, 13, 15, 16, 20 and 25 remain pending under examination. Claims 6-9, 11, 14, 17-19, 21-24, 26 and 27 were previously withdrawn. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made.

In the middle paragraph on page 8 of the Board's Decision on Appeal, it is contended that (emphasis added):

The "body portion" and "baffle layer" recited in Appellant's claim are not one in the same as evidenced by Appellant's specification, which explains that the "invention provides for a baffle layer 16 incorporated in the body portion 12 of the face mask 10." (FF 3). **Neither Appellant's claims, nor any portion of Appellant's specification** that Appellant has directed us to or that we can find, **requires the baffle layer to be completely contiguous with the body portion of the face mask.**

Applicant has amended each of independent claims 1 and 12 to require that the layer with the projections be completely contiguous with the body portion of the face mask. These amendments do not present any new matter. For the examples given in applicant's specification have the pertinent layer being contiguous with the full extent of the body portion. Per claims 1 and 12, the body portion is that portion that is configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion.

The portion of the Baumann et al mask 10 that is configured to cover the mouth of the wearer is not provided with the resilient member 12 and its air pillowed lower density regions 44 (arguably projections). Accordingly, resilient member 12 of Baumann et al mask 10 cannot be said to anticipate the baffle of applicant's claim 1 or the layer of applicant's claim 12.

Applicant therefore respectfully submits that claims 1-3, 5, 10, 12, 13, 20 and 25 are patentable under 35 U.S.C. 102(b) over Baumann et al.

For the reasons explained below, applicant respectfully traverses the rejection of claims 4, 15 and 16 under 35 U.S.C. 103(a) as being unpatentable over Baumann et al in view of Niemeyer.

Niemeyer fails to correct the deficiency that is noted above in Baumann et al. Moreover, Niemeyer fails to disclose any baffle layer with projections as required by claims 4, 15 and 16. Thus, it is not possible for Niemeyer to be read to disclose or suggest a layer stiffer than a baffle layer with projections as required by claims 4, 15 and 16. Nor does the Office Action identify any such stiffer layer in Niemeyer.

Applicant therefore respectfully submits that claims 4, 15 and 16 are patentable under 35 U.S.C. 103(a) over Baumann et al in view of Niemeyer.

Applicant respectfully requests reconsideration and reexamination of claims 1-5, 10, 12, 13, 15, 16, 20 and 25, as presented herein, and submits that these claims are in condition for allowance and should be passed to issue.

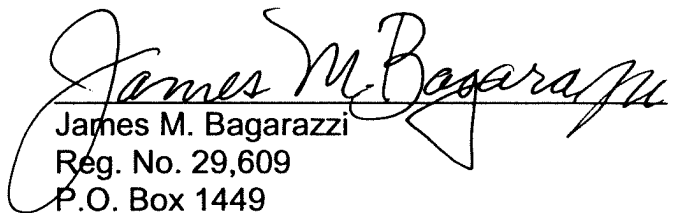
If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted

herewith.

Respectfully submitted,

DORITY & MANNING, P.A.

DATED: 9 January 2009


James M. Bagarazzi
Reg. No. 29,609
P.O. Box 1449
Greenville, S C 29602-1449
(864) 271-1592

Electronic Acknowledgement Receipt

EFS ID:	4585198
Application Number:	10743260
International Application Number:	
Confirmation Number:	4463
Title of Invention:	Face mask having baffle layer for improved fluid resistance
First Named Inventor/Applicant Name:	Eric C. Steindorf
Customer Number:	22827
Filer:	James M. Bagarazzi/Denise Ginn
Filer Authorized By:	James M. Bagarazzi
Attorney Docket Number:	KCX-771 (19263)
Receipt Date:	09-JAN-2009
Filing Date:	22-DEC-2003
Time Stamp:	13:36:39
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	\$810
RAM confirmation Number	7831
Deposit Account	
Authorized User	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
-----------------	----------------------	-----------	-------------------------------------	------------------	------------------

1		KCX-771- RCE_PreliminaryAmendment. pdf	445618 674b29976cfabac223c62e8258189b90ff63b4	yes	11
Multipart Description/PDF files in .zip description					
		Document Description	Start	End	
		Miscellaneous Incoming Letter	1	1	
		Request for Continued Examination (RCE)	2	2	
		Preliminary Amendment	3	3	
		Claims	4	8	
		Applicant Arguments/Remarks Made in an Amendment	9	11	
Warnings:					
Information:					
2	Fee Worksheet (PTO-06)	fee-info.pdf	30570 193de8affcf4e3358644afe9aac4518ca9fe97ea	no	2
Warnings:					
Information:					
Total Files Size (in bytes):			476188		
<p>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</p> <p><u>New Applications Under 35 U.S.C. 111</u> If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><u>National Stage of an International Application under 35 U.S.C. 371</u> If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p> <p><u>New International Application Filed with the USPTO as a Receiving Office</u> If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</p>					